

APPEALS/IMPARTIAL DUE PROCESS (HEARING AND MEDIATION)

**I. LEGAL AUTHORITY:**

The Workforce Investment Act of 1998, Section 102(a),(d); 29 USC 722(c) and 34 CFR 361.57; Rhode Island General Laws 42-35 entitled Administrative Procedures; Rhode Island General Section 42-12-8 through 42-12-16.

**II. POLICY STATEMENT AND PURPOSE:**

Applicants and eligible individuals, or as appropriate, the individual's parent, guardian, or representative, hereinafter referred to as individual with a disability, will be advised of her/his rights related to review of determinations made by ORS personnel that affect the provision of vocational rehabilitation services to the applicant or individual with a disability.

This review, or appeal, process shall provide an opportunity for the applicant, or individual with a disability to submit evidence and information to support the position of the applicant or individual with a disability.

Any applicant or eligible individual must be advised of his/her appeal rights:

- \* When s/he applies for vocational rehabilitation services;
- \* At the time her/his Individualized Plan for Employment (IPE) is developed; and
- \* Upon reduction, suspension, or cessation of vocational rehabilitation services for the individual.

Any communication with the applicant or individual with a disability is provided in writing or in appropriate modes of communication in accordance with the individual's informed choice.

Information is provided to each applicant/individual with a disability that s/he has the right to pursue any or all of the following options:

Supervisory or Customer Service Conference;

Mediation;

Impartial due process hearing;

The applicant/individual with a disability must be also informed of the availability of assistance from the Client Assistance Program and his/her right to submit evidence and be represented by an individual of his/her choice at all levels of due process.

### III. PROCEDURES:

#### A. NOTIFICATION REQUIREMENTS:

The rehabilitation counselor or ORS representative must notify an applicant or individual with a disability when:

1. S/He is determined to be ineligible for rehabilitation services. (See Section 115.18.)
2. There is a denial of vocational rehabilitation services (See Section 115.6)
3. There is a reduction, suspension, or discontinuance of vocational rehabilitation services for that individual (due to a substantial change which may include a subsequent ineligibility decision) after eligibility has been determined and those for whom an IPE has been developed, approved, and initiated. This includes services for individuals that require amendment to the IPE as well as closures. (See Section 115.18.)
4. In order to facilitate due process procedures, the following forms are utilized:

Denial of services decision

Case closure decision

"Applicant or Individual with Disability's Request for Mediation and Due Process Hearing"

"Hearing Appointment" and "Information about Hearings for Applicants and Recipients" (provided through DHS Hearing Office)

Cancellation of Impartial Due Process Hearing

- B. STEPS OF THE APPEALS PROCESS (All steps may be requested at the same time or separately. Grievance or dispute may be resolved at any level within the process):
1. Supervisory or Customer Service Conference (optional);
  2. Mediation;
  3. Due Process Hearing;
  4. Director's Option to Review Hearing Decision (optional); and
  5. Judicial Review.
- C. PROCESS FOR RESOLVING DISPUTES
1. An individual (or her/his representative) requests Mediation and/or a Due Process Hearing in writing (using the "Request for Mediation and Due Process Hearing" form if desired) within thirty (30) days of the date of the notice of the decision by ORS. Mediation may be requested at the same time as the request for a Due Process Hearing, and in addition to the hearing, or may be requested by itself as the mechanism to resolve the dispute.
  2. An individual request may request assistance from ORS in completing the "Request for Mediation and Due Process Hearing", if necessary.
  3. The written request for Mediation and/or Due Process Hearing is returned to the appropriate ORS Counselor who then completes Section II and forwards the original immediately to the DHS Hearing Office and a copy to the Deputy Administrator, ORS.
  4. If the situation is resolved through Mediation or other means, cancellation of any scheduled due process hearing is made in writing or using ORS forms by the individual.
- D. TIME LINES
1. A Supervisory Conference or Customer Relations

Conference, if requested, must take place within fifteen (15) days of the request. The decision is rendered orally at the Conference.

2. If Mediation and/or Due Process Hearing is requested after the Supervisory/Customer Relations decision is rendered, the written request or "Request for Mediation and Due Process Hearing" form is completed by the individual with a disability requesting either Mediation, Due Process Hearing, or both. If Mediation is requested, the request is forwarded to the Deputy Administrator or her/his designee. If a Due Process Hearing, or both Mediation and Due Process Hearing are requested, the Due Process Hearing request is forwarded to be scheduled within forty-five (45) days of the request.
4. The Mediation session(s), resulting in a written agreement or lack of agreement, must be held within fifteen (15) days of the request. If the situation is resolved through Mediation, the Due Process Hearing can be canceled through a written request for cancellation.
5. If the dispute is not resolved by Mediation:
  - a. If the individual has requested a Due Process Hearing, the hearing is conducted.
  - b. If the individual has not requested a Due Process Hearing, s/he may request a Hearing in writing or using the "Request for Mediation and Due Process Hearing" form if it is within thirty (30) days of the date of the notice of the decision by ORS.

E. MEDIATION PROCESS

Mediation is a process where a neutral third person, called a Mediator, acts to encourage and facilitate the resolution of a dispute between an applicant or individual with a disability and a representative(s) of ORS. Mediation is a problem-solving process that is voluntary, confidential, unbiased, and mutually agreed upon.

Mediation provides an opportunity for the applicant, or individual with a disability, to submit at the mediation session(s) evidence and information to support her or his position and be represented by an

individual of his/her choice; it also allows for the agency representative to present his/her position.

1. Mediation must be voluntary on the part of both of the parties. It must not be used as a means to deny or delay a Hearing before an Impartial Hearing Officer. Mediation is conducted by a qualified and impartial Mediator who is trained in effective mediation techniques.
2. Qualified impartial Mediators are trained in effective mediation techniques and are knowledgeable in laws and regulations governing the provision of Title I, Vocation Rehabilitation Services. Selection of qualified Mediators will be on a rotating basis from a list maintained by the ORS.
3. Mediation is conducted in a manner which will accommodate the applicant or the individual with a disability. At the conclusion of the mediation, the applicant or individual with a disability will be advised of the next step in the appeals process and when the agreement, if any, will be provided should the individual later desire to take such action. Either party may terminate mediation at any time in the process.
4. Discussions that occur and materials generated for or presented in the mediation process shall be confidential and may NOT be used as evidence in any subsequent due process hearing or civil proceedings.
5. A written statement of the agreement achieved by the mediation is prepared by the Mediator. The agreement will be sent to the applicant, or individual with a disability, or, if appropriate, the individual's parent guardian or other representative, Rehabilitation Counselor, Supervisor, and Deputy Administrator or designated appeals coordinator. The statement shall set forth the issue and the basis for the agreement. If the applicant or individual with a disability finds the results to be unsatisfactory, an Impartial Due Process Hearing may be requested as described in D., 5. above.
6. Mediation is considered completed upon signing of the written settlement agreement by both parties, or by termination of the mediation. In the

absence of signed agreement or formal termination, mediation shall be considered complete on the date of the last mediation session concerning the issue under dispute.

F. IMPARTIAL DUE PROCESS HEARING

An Impartial Due Process Hearing is a full evidentiary hearing conducted by a Department of Human Services Hearing Officer in accordance with applicable laws.

1. Upon written request or "Request for Mediation and Due Process Hearing," the Hearing before an Impartial Hearing Officer (IHO) will be scheduled within forty-five (45) days of the request.
2. When Mediation has also been requested, the Mediation process may take place prior to the Hearing date (within thirty (30) days).

In situations where Mediation has also been requested the Hearing date will be scheduled as close as possible to the forty-fifth day to allow time for dispute resolution through the Mediation process.

3. One or more of the following represents the agency at the Due Process Hearing: Rehabilitation Counselor, Supervisor, and other appropriate representative(s) of the agency.
4. The Hearing is to be held at the Agency or a site convenient to the applicant or individual with a disability to reasonably accommodate his or her special needs.
5. The applicant or individual with a disability or, if appropriate, the individual's parent or guardian or other representative, will be notified in writing on a of the date, the location, and the time of the hearing. In addition, a copy of the hearing procedure and other relevant information necessary to prepare the applicant's or individual's case will be provided.
6. The Hearing Officer will endeavor to bring out all relevant facts and maintain order through the hearing.
7. The applicant or individual with a disability may be represented by counsel, or other representative at her/his choice and expense.

8. All documents and records to be introduced at the hearing may be examined by the applicant or individual with a disability at a reasonable time prior to, as well as during, the hearing.
9. Only information bearing directly on the issue under review may be introduced from the individual with a disability's record, and the Hearing Officer will not review any information not made available to the applicant or individual with a disability.
10. If the Hearing Officer considers additional information is necessary, particularly medical information, it will be obtained at Agency expense from a source other than the examining physician, medical consultant, or any person involved in the original decision.
11. When the evidence and documentation have been received by the Hearing Officer, a decision will be rendered.
12. The Impartial Hearing Officer will make a decision based on the provisions of the approved State Plan and the Rehabilitation Act and will provide to the applicant or individual with a disability and to the Administrator of the designated State unit, a written decision, including the findings of fact and the grounds for the decision within thirty (30) days of the completion of the Hearing.

G. DIRECTOR'S OPTION TO REVIEW IHO DECISION

Either party may request a review of the decision of the Hearing Officer within twenty (20) days after the decision. If neither party requests this review, the decision of the hearing officer becomes the final decision of the agency on the 21<sup>st</sup> day after the decision is issued.

1. The impartial review of the IHO's decision when requested shall be conducted by the Director of the Department of Human Services.
2. The following standard of review shall apply in reaching a final decision on the issue under review:
  - a. Each party will be given an opportunity for the submission of additional evidence and

information relevant to the issue;

b. The reviewing official shall not overturn or modify the decision of the IHO, or part of the decision that supports the position of the applicant or eligible individual, unless the reviewing official concludes, based on clear and convincing evidence, that the decision of the IHO is clearly erroneous on the basis that it is contrary to:

- (i) the approved State Plan;
- (ii) the Rehabilitation Act of 1973, as amended including regulations implementing the Act; or
- (iii) any applicable State regulation or policy that is consistent with the Federal Rehabilitation Act.

3. The reviewing official shall render a final decision within thirty (30) days of the initial request to review.

4. The reviewing official shall provide a written decision to both parties, i.e., the applicant or individual with a disability or individual's representative and to the Office of Rehabilitation Services.

#### H. IMPLEMENTATION OF HEARING DECISION

If a party brings a civil action under section (I) below to challenge a final decision of an impartial hearing officer or to challenge a final decision of the reviewing official under section (G) above, the final decision involved shall be implemented pending review by the court.

#### I. JUDICIAL REVIEW

Any individual aggrieved by the final Agency decision may 1) bring a civil action for review of such decision in any State court of competent jurisdiction or in a district court of the United States of competent jurisdiction without regard to the amount in controversy, or 2) file for a Judicial Review in accordance with Rhode Island General Law 42-35-15 by filing a complaint in the Superior Court of Providence County within thirty (30) days of the date of the decision.

#### I. ABANDONMENT OF THE HEARING REQUEST



A hearing request may be denied or dismissed when it is determined that it has been abandoned. Abandonment may occur when, without good cause, an applicant or individual with a disability fails to appear at a hearing.

A hearing may not be considered abandoned as long as the individual has notified the Agency, up to the time of the hearing, that s/he is unable due to good cause to keep the appointment and that s/he still wishes a hearing.

If the individual does not appear and has not notified the Agency up to the time of the hearing that s/he is unable to appear for good cause, the Hearing Officer notifies the individual, in writing, that the hearing request will be considered abandoned. The Hearing Officer advises the applicant or individual with a disability to contact the Hearing Office within ten (10) days if s/he wishes to continue the hearing and can demonstrate good cause for failing to keep the appointment.

Good cause is established on the basis of the following factors:

- 1) Death in family;
- 2) Personal injury or illness which reasonably prohibits the individual from attending the hearing;
- 3) Sudden and unexpected emergency.

If the Hearing Officer determines that good cause exists, s/he reschedules the hearing and notifies all parties.